

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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AUGUSTIN GARCIA MORAN, MOISES
DOMINIGUEZ and ROGELIO CAYETANO
individually and on behalf of others similarly situated

Plaintiffs,

Case No.: 18-CV-02498

-against-

**ANSWER TO FIRST AMENDED
COMPLAINT**

ORGANIC 7 MARKET, INC. (D/B/A 7 MARKET
PLACE, INC.) HENRY YOUNSUB BYUN and
HEIDI KIM

Defendants

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Defendants Organic 7 Market, Inc., (herein called the “Corporate Defendant”), Henry
Younsub Byun and Heidi Kim, hereinafter collectively called “Defendants” through their
counsel, the Law Offices of Diane H. Lee, as and for its Answer to the above captioned action,
state as follows:

1. Defendants deny the allegations set forth in Paragraph 1 of the Complaint except to admit that Plaintiffs are current and former employees of the Corporate Defendant and Defendant Kim.
2. Defendants deny the allegations set forth in Paragraph 2 of the Complaint except to admit that some of the Defendants have ownership interest and operate the deli located at 702 2nd Avenue New York, NY.
3. Defendants deny the allegations set forth in Paragraph 3 of the Complaint.
4. Defendants deny the allegations of Paragraph 4 of the Complaint except to admit that Plaintiffs were current and former employees of some of the Defendants.
5. Defendants admit the allegations set forth in Paragraph 5 of the Complaint.

6. Defendants deny the allegations set forth in Paragraph 6 of the Complaint.
7. Defendants deny the allegations set forth in Paragraph 7 of the Complaint.
8. Defendants deny the allegations set forth in Paragraph 8 of the Complaint.
9. Defendants deny the allegations of Paragraph 9 of the Complaint.
10. Defendants deny the allegations of Paragraph 10 of the Complaint.
11. Defendants deny the allegations of Paragraph 11 of the Complaint.
12. Defendants neither deny nor admit Paragraph 12 as it is a statement of law. Inasmuch as Paragraph 12 requires an answer, the Defendants deny Paragraph 12 of the Complaint.
13. Defendants deny the allegations of Paragraph 13 of the Complaint.
14. Defendants deny the allegations of Paragraph 14 of the Complaint except to admit that if the conduct that is the basis of the complaint allegedly took place in this district, and therefore, if federal jurisdiction exists, venue is proper in this district.
15. Defendants admit the allegations of Paragraph 15 of the Complaint.
16. Defendants deny the allegations set forth in Paragraph 16 of the Complaint except to admit that Plaintiff Garcia was employed by some of the Defendants for a period of time.
17. Defendants admit the allegations of Paragraph 17 of the Complaint.
18. Defendants the allegations set forth in Paragraph 18 of the Complaint except to admit that Plaintiff Domiguez was employed by some of the Defendants for a period of time.
19. Defendants admit the allegations of Paragraph 19 of the Complaint.

20. Defendants deny the allegations set forth in Paragraph 20 of the Complaint except to admit that Plaintiff Cayetano was employed by some of the Defendants for a period of time.
21. Defendants neither deny nor admit Paragraph 21. To the extent that Paragraph 21 requires an answer, Defendants deny the allegations set forth in Paragraph 21 of the Complaint.
22. Defendants deny the allegations set forth in Paragraph 22 of the Complaint except to admit that some of the Defendants operate the deli and they have ownership interest in the deli.
23. Defendants admit the allegations of Paragraph 23 of the Complaint.
24. Defendant deny the allegations set forth in Paragraph 24 of the Complaint.
25. Defendants deny the allegations set forth in Paragraph 25 of the Complaint.
26. Defendants deny the allegations set forth in Paragraph 26 of the Complaint except to admit that some of the Defendants operate the deli.
27. Defendants deny the allegations of Paragraph 27 of the Complaint except to admit that some of the Defendants have ownership interest.
28. Defendants deny the allegations set forth in Paragraph 28 of the Complaint.
29. Defendants deny the allegations of Paragraph 29 of the Complaint.
30. Defendants deny the allegations of Paragraph 30 of the Complaint.
31. Defendants deny the allegations of Paragraph 31 of the Complaint.
32. Defendants deny the allegations of Paragraph 32 (a) through (h) of the Complaint.
33. Defendants deny the allegations of Paragraph 33 of the Complaint.
34. Defendants admit the allegations of Paragraph 34 of the Complaint.

35. Defendants deny the allegations of Paragraph 35 of the Complaint.
36. Defendants neither deny nor admit Paragraph 36. To the extent that Paragraph 36 requires an answer, Defendants deny the allegations set forth in Paragraph 36 of the Complaint.
37. Defendants deny the allegations of Paragraph 37 of the Complaint, except to admit that Plaintiff Garcia was employed by some of the Defendants for a period of time.
38. Defendants deny the allegations of Paragraph 38 of the Complaint except to admit that Plaintiff was employed by some of the Defendants as a delivery worker.
39. Defendants deny the allegations set forth in Paragraph 39 of the Complaint.
40. Defendants admit the allegations of Paragraph 40 of the Complaint.
41. Defendants deny the allegations of Paragraph 41 of the Complaint.
42. Defendants deny the allegations of Paragraph 42 of the Complaint.
43. Defendants deny the allegations of Paragraph 43 of the Complaint.
44. Defendants admit the allegations of Paragraph 44 of the Complaint.
45. Defendants deny the allegations of Paragraph 45 of the Complaint.
46. Defendants deny the allegations of Paragraph 46 of the Complaint.
47. Defendants deny the allegations of Paragraph 47 of the Complaint.
48. Defendants deny the allegations of paragraph 48 of the Complaint.
49. Defendants deny the allegations of Paragraph 49 of the Complaint.
50. Defendants deny the allegations of Paragraph 50 of the Complaint.
51. Defendants deny the allegations of Paragraph 51 of the Complaint.
52. Defendants deny the allegations of Paragraph 52 of the Complaint.
53. Defendants deny the allegations of Paragraph 53 of the Complaint.

54. Defendants deny the allegations of Paragraph 54 of the Complaint.
55. Defendants deny the allegations of Paragraph 55 of the Complaint.
56. Defendants deny the allegations of Paragraph 56 of the Complaint, except to admit that Plaintiff Dominguez was employed by some of the Defendants for a period of time.
57. Defendants deny the allegations of Paragraph 57 of the Complaint except to admit that Plaintiff Dominguez was employed by some of the Defendants as a delivery worker.
58. Defendants deny the allegations of Paragraph 58 of the Complaint.
59. Defendants admit the allegations of Paragraph 59 of the Complaint.
60. Defendants deny the allegations of Paragraph 60 of the Complaint.
61. Defendants deny the allegations of Paragraph 61 of the Complaint.
62. Defendants deny the allegations of Paragraph 62 of the Complaint.
63. Defendants admit the allegations of Paragraph 63 of the Complaint.
64. Defendants deny the allegations of Paragraph 64 of the Complaint.
65. Defendants deny the allegations set forth in Paragraph 65 of the Complaint.
66. Defendants deny the allegations of Paragraph 66 of the Complaint.
67. Defendants deny the allegations of Paragraph 67 of the Complaint.
68. Defendants deny the allegations of Paragraph 68 of the Complaint.
69. Defendants deny the allegations of Paragraph 69 of the Complaint.
70. Defendants deny the allegations of Paragraph 70 of the Complaint.
71. Defendants deny the allegations of Paragraph 71 of the Complaint.
72. Defendants deny the allegations of Paragraph 72 of the Complaint.
73. Defendants deny the allegations of Paragraph 73 of the Complaint.
74. Defendants deny the allegations of Paragraph 74 of the Complaint.

75. Defendants deny the allegation of Paragraph 75 of the Complaint.
76. Defendants deny the allegation of Paragraph 76 of the Complaint.
77. Defendants deny the allegations of Paragraph 77 of the Complaint except to admit that Plaintiff Cayetano was employed by some of the Defendants for a period of time.
78. Defendants deny the allegations of Paragraph 78 of the Complaint.
79. Defendants deny the allegations of Paragraph 79 of the Complaint.
80. Defendants admit the allegations of Paragraph 80 of the Complaint.
81. Defendants deny the allegations of Paragraph 81 of the Complaint.
82. Defendants deny the allegations of Paragraph 82 of the Complaint.
83. Defendants deny the allegations of Paragraph 83 of the Complaint.
84. Defendants admit the allegations of Paragraph 84 of the Complaint.
85. Defendants deny the allegations of Paragraph 85 of the Complaint.
86. Defendants deny the allegations of Paragraph 86 of the Complaint.
87. Defendants deny the allegations of Paragraph 87 of the Complaint.
88. Defendants deny the allegations of Paragraph 88 of the Complaint.
89. Defendants deny the allegations of Paragraph 89 of the Complaint except to admit that Plaintiff did not arrive at work at the schedule time in violation of the Defendants' policy.
90. Defendants deny the allegations of Paragraph 90 of the Complaint.
91. Defendants deny the allegations of Paragraph 91 of the Complaint.
92. Defendants deny the allegations of Paragraph 92 of the Complaint.
93. Defendants deny the allegations of Paragraph 93 of the Complaint.
94. Defendants deny the allegations of Paragraph 94 of the Complaint.

95. Defendants deny the allegations of Paragraph 95 of the Complaint.
96. Defendants deny the allegations of Paragraph 96 of the Complaint.
97. Defendants admit the allegations of Paragraph 97 of the Complaint.
98. Defendants deny the allegations of Paragraph 98 of the Complaint.
99. Defendants deny the allegations of Paragraph 99 of the Complaint.
100. Defendants deny the allegations of Paragraph 100 of the Complaint.
101. Defendants deny the allegations of Paragraph 101 of the Complaint.
102. Defendants deny the allegations of Paragraph 102 of the Complaint.
103. Defendants deny the allegations of Paragraph 103 of the Complaint.
104. Defendants neither deny nor admit Paragraph 104. To the extent that Paragraph 104 requires an answer, Defendants deny the allegations set forth in Paragraph 104 of the Complaint.
105. Defendants deny the allegations of Paragraph 105 of the Complaint.
106. Defendants deny the allegations of Paragraph 106 of the Complaint.
107. Defendants repeat their responses to Paragraph 1 through 106 of the Complaint.
108. Defendants deny the allegations of Paragraph 108 of the Complaint, except to admit that some of the Defendants had the power to hire and fire and determined the rate and method of compensation of the Plaintiff.
109. Defendants deny the allegations of Paragraph 109 of the Complaint.
110. Defendants admit the allegations of Paragraph 110 of the Complaint.
111. Defendants deny the allegations of Paragraph 111 of the Complaint.
112. Defendants deny the allegations of Paragraph 112 of the Complaint.
113. Defendants deny the allegations of Paragraph 113 of the Complaint.

114. Defendants repeat their responses to Paragraph 1 through 113 of the Complaint.
115. Defendants deny the allegations of Paragraph 115 of the Complaint.
116. Defendants deny the allegations of Paragraph 116 of the Complaint.
117. Defendants deny the allegations of Paragraph 117 of the Complaint.
118. Defendants repeat their responses to Paragraph 1 through 117 of the Complaint.
119. Defendants deny the allegations of Paragraph 119 of the Complaint except to admit that the Plaintiffs were employees of some of the Defendants.
120. Defendants deny the allegations of Paragraph 120 of the Complaint.
121. Defendants deny the allegations of Paragraph 121 of the Complaint.
122. Defendants deny the allegations set forth in Paragraph 122 of the Complaint.
123. Defendants repeat their responses to Paragraph 1 through 122 of the Complaint.
124. Defendants deny the allegations of Paragraph 124 of the Complaint.
125. Defendants deny the allegations of Paragraph 125 of the Complaint.
126. Defendants deny the allegations of Paragraph 126 of the Complaint.
127. Defendants repeat their responses to Paragraph 1 through 126 of the Complaint.
128. Defendants deny the allegations of Paragraph 128 of the Complaint.
129. Defendants deny the allegations of Paragraph 129 of the Complaint.
130. Defendants deny the allegations of Paragraph 130 of the Complaint.
131. Defendants repeat their responses to Paragraph 1 through 130 of the Complaint.
132. Defendants deny the allegations of Paragraph 132 of the Complaint.
133. Defendants deny the allegations of Paragraph 133 of the Complaint.
134. Defendants repeat their responses to Paragraph 1 through 133 of the Complaint.
135. Defendants deny the allegations of Paragraph 135 of the Complaint.

136. Defendants deny the allegations of Paragraph 136 of the Complaint.

137. Defendants repeat their responses to Paragraph 1 through 137 of the Complaint.

138. Defendants deny the allegations of Paragraph 138 of the Complaint.

139. Defendants deny the allegations of Paragraph 139 of the Complaint.

140. Defendants repeat their responses to Paragraph 1 through 139 of the Complaint.

141. Defendants deny the allegations of Paragraph 141 of the Complaint, except to admit that the Plaintiffs were employees of some of the Defendants.

142. Defendants deny the allegations of Paragraph 142 of the Complaint.

143. Defendants deny the allegations of Paragraph 143 of the Complaint.

144. Defendants deny the allegations of Paragraph 144 of the Complaint.

145. Defendants deny the allegations of Paragraph 145 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

146. The Plaintiffs were not employees of the Defendants for the purposes of the Fair Labor Standards Act (“FLSA”).

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

147. Pursuant to 29 U.S.C. §260, the Court should not award liquidated damages for violations of the FLSA because the Defendants acted in good faith.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

148. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

149. The Plaintiffs are not entitled to conditional or final certification or to Court-facilitated notice under 29 U.S.C §216(b) because Plaintiffs are not similarly situated to potential opt-ins and Plaintiffs cannot adequately represent the interests of the potential opt-ins.

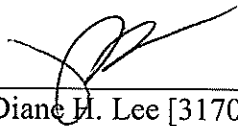
AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

150. The Plaintiffs' claims are not proper for treatment as a class action because Plaintiffs cannot satisfy the requirements of Rule 23.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray this Court: (a) declines jurisdiction over all or some claims in this matter; (b) dismissed all claims with prejudice; (c) awards the Defendants their attorney's fees, costs and expenses as provided for by the applicable statutes; and (d) any other relief which this Court deems just and equitable.

Dated: New York, NY
June 27, 2018



Diane H. Lee [3170]
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CERTIFICATE OF SERVICE

I, Diane H Lee, an attorney admitted to practice before this Court and a member in good standing of the bar of the State of New York, certify under penalties of perjury that I caused to be served the annexed Answer upon:

_____/s/____

Diane H. Lee [DL3170]

To: Michael Faillace & Associates, P.C.

60 East 42nd Street Suite 2540

New York, NY 10165

By Email: michael@faillacelaw.com on April 27, 2018